

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

| | | |
|---------------------------------------|---|------------------------------|
| In the Matter of Transfer Application |) | PRELIMINARY DETERMINATION |
| T-13272, Multnomah County |) | PROPOSING APPROVAL OF A |
| |) | CHANGE IN POINT OF DIVERSION |

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

ALFRED OBRIST
16600 SE FOSTER RD
GRESHAM, OR 97080

Findings of Fact

1. On October 17, 2019, Alfred Obrist filed an application to change the point of diversion under Certificate 86730. The Department assigned the application number T-13272.
2. Notice of the application for transfer was published on October 29, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. Evidence demonstrating that Land Use approval has been obtained, as required under OAR 690-380-3000 (19), has not been provided to the Department.
4. On February 21, 2020, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13272 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 23, 2020, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
5. On March 12, 2020 the applicant submitted evidence demonstrating that Land Use approval has been obtained.

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| Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination. |
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7. The right to be transferred is as follows:

Certificate: 86730 in the name of A J AND DORIS OBRIST (perfected under Permit S-52712)
Use: MAINTENANCE OF A RESERVOIR, CONSTRUCTED UNDER PERMIT R-11957, FOR AESTHETICS, FISH PROPAGATION, AND RECREATION
Priority Date: DECEMBER 20, 1993
Rate: 0.026 CUBIC FOOT PER SECOND
Period of Use: DECEMBER 1 THROUGH MARCH 31
Source: KELLY CREEK, a tributary to JOHNSON CREEK

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|-----|-----|-----|-------|--|
| 1 S | 3 E | WM | 19 | SW NW | POD 1 - NORTH 65 DEGREES 40 MINUTES 18 SECONDS EAST, 1066.16 FEET FROM W1/4 CORNER, SECTION 19 |

Authorized Place of Use:

| Twp | Rng | Mer | Sec | Q-Q |
|-----|-----|-----|-----|-------|
| 1 S | 3 E | WM | 19 | SW NW |

8. Transfer Application T-13272 proposes to move the authorized point of diversion approximately 425 feet downstream to:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|-----|-----|-----|-------|--|
| 1 S | 3 E | WM | 19 | SW NW | POD 2 - LATITUDE: 45.47022, LONGITUDE -122.49364 |

9. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

Transfer Review Criteria [OAR 690-380-4010(2)]

10. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
11. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-13272.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.

14. All other application requirements are met.

Determination and Proposed Action

The change in point of diversion proposed in Transfer Application T-13272, appears to be consistent, as conditioned, with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-13272 is approved, the final order will include the following:

1. *The change in point of diversion proposed in Transfer Application T-13272 is approved.*
2. *The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 86730 and any related decree.*
3. *Water right Certificate 86730 is cancelled.*
4. *The quantity of water diverted at the new point of diversion (POD 2), shall not exceed the quantity of water lawfully available at the original point of diversion (POD 1).*
5. *Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.*
6. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2021**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the change and full beneficial use of the water.*

7. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on **MAY 28 2020**



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
THOMAS M BYLER, DIRECTOR
Oregon Water Resources Department

This draft Preliminary Determination was prepared by Scott Grew. If you have questions about the information in this document, you may reach him at scott.a.grew@oregon.gov or 503-986-0890.

Protests should be addressed to the attention of Water Rights Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.

Notice Regarding Service Members: Active duty servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free number.



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

May 28, 2020

Applicant

ALFRED OBRIST
16600 SE FOSTER RD
GRESHAM, OR 97080

SUBJECT: Water Right Transfer Application T-13272

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13272. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the Department's notice.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Please contact me at scott.a.grew@oregon.gov or 503-986-0890 if I may be of assistance.

Sincerely,

Scott Grew

Transfer Specialist

cc: T-13272
Amy J. Landvoigt, District 20 Watermaster (*via e-mail*)
Johnson Creek Watershed Council, Agent for the applicant (*via e-mail*)

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